August 16, 2019

**TO:** Parliamentary Committee Members

**FROM:** Rae McQuade, President and COO, Bill Boswell, NAESB General Counsel & Jonathan Booe, NAESB Executive Vice President & CAO

**RE:** NAESB Governance Documents 2.0 – Bylaws Work Paper

This work paper has been prepared to continue efforts that support the direction of the NAESB Parliamentary Committee and the NAESB Board of Directors in the review and update of the NAESB Governance Documents (NAESB Certificate of Incorporation, NAESB Bylaws, and the NAESB Operating Practice). Specifically, the work paper is intended to support activities to address item number 4 below as it relates to the NAESB Bylaws.

1. The Bylaws are consistent with Delaware corporate law
2. The Bylaws are consistent and consistent with the other Governance Documents
3. The language of the provisions and/or procedures included in the Bylaws are consistent with the original intent of the adopted provision and/or procedure
4. ***The*** ***Bylaws are consistent with, and incorporate where necessary, resolutions adopted by the NAESB Board of Directors***
5. The Bylaws are consistent with, and incorporate where necessary, undocumented practices and procedures of NAESB

On November 15, 2018, the Parliamentary Committee reviewed the Board of Directors’ resolutions that had been identified by NAESB staff for possible incorporation into the NAESB Governance Documents. During that review, several resolutions were selected for consideration when the committee reviewed the NAESB Bylaws. These resolutions are provided below.

1. **Adoption of the NAESB Policy on Efficient Standards Development (September 25, 2008) – Should this be a standalone policy or included as Section 20.1 of the Bylaws?**

While segment blocks[[1]](#footnote-1) play an important role in protecting the interests of a market segment and protecting the interests of a minority position, it is the hope of the Board of Directors that segment blocks are rare, minimized and not a part of a routinely used strategy for voting. If a segment block is inevitable, it should be determined quickly and processed quickly. Where segment blocks may occur due to the controversial nature of the standards development that may indicate unresolved policy issues, steps should be taken to expedite the definitive determination of opposition and if progress could be made through a variety of actions. Should it be determined that consensus is not possible, then a decision can be made so that resources can be more effectively applied to other development efforts. Below are four actions that may be taken to increase standards development efficiency and to obtain decisions quickly when it may be difficult to achieve support from all segments in a given standards development project:

* For controversial and high visibility projects, the board may establish timelines at the outset for the entire project in more detail than just the date provided for the annual plan entry.
* For controversial or high visibility projects, EC leadership or the Executive Director may request of the Managing Committee, that facilitators be engaged at the onset to support the standards development process.
* When the Executive Committee leadership determines that a single segment block is expected and this is communicated to the Managing Committee or the board, all board members of the relevant quadrant will be contacted to determine if steps can be taken that would prevent a single segment block. The board may establish timelines to ensure the effective use of resources.
* FERC staff or other applicable regulatory staff assistance shall be requested only by the Managing Committee if needed to overcome technical questions that are impeding the progress of subcommittees in standards development efforts.

**2.) Notational Ballot Process (December 9, 2010) – Should this be included as NAESB Operating Procedure given the level of detail?**

Notational ballots are primarily a tool to permit parties to vote when they did not have the opportunity to do so at meetings where votes are taken but where there were insufficient votes cast at the meeting to determine the outcome of an issue. In the case of EC votes on standards, NAESB's certificate and bylaws require specific voting thresholds for a standard to be passed; thus, notational ballots facilitate the process of adopting (or not adopting) standards. NAESB's practice has been as follows:

1) In a meeting where there are a sufficient number of voting members present (in person or through their alternates) to adopt a standard and the vote is announced on a motion, it is final as to that motion. In other words, no one may change their vote after the result is announced. The only way to do anything further is via a motion to reconsider.

2) In a meeting where there is an insufficient number of voting members present (in person/phone or through alternates) to adopt a standard and a notational ballot is sent out, it goes only to those members who have not previously cast their votes. The votes cast at the meeting are final after that portion of the meeting is concluded and the only issue is counting the votes of the members who have been sent notational ballots. The standard is adopted or not based upon that vote count. In all other respects the matter is handled in the same fashion as if all were at the meeting.

3) In the case of a complex matter, or for other good cause, the chair(s) have had and continue to have the discretion to announce that a vote will be taken by notational ballot. This announcement must precede the vote or be made during the meeting. As long as notice is given at the meeting and there is no objection by the group, the vote proceeds in that fashion and all may vote notationally until the announced close of the notational voting period.

4) The default process at NAESB is as described in 1 and 2. Item 3 is available in lieu of the default as indicated above. The reason for the default is that NAESB is committed to an open, transparent process which can best be achieved in an open meeting. With 3 the open meeting still takes place and open discussion occurs but the vote itself is notational because the chair(s), in the exercise of their sound discretion, and without objection from the group, consider that it will facilitate the process. Everyone thus understands the rule and it applies equally to everyone voting.

**3.) Abstention Voting Process for Executive Committees (March 22, 2012) – This is currently included in the NAESB Operating Procedures**

If a member of the EC abstains from a vote such member’s right to vote shall pass to the designated segment alternate to cast the vote. If the designated alternate abstains, the right to vote shall pass to the next designated segment alternate, in succession, until a vote is cast. No less than one business day prior to the EC action requiring a vote, each segment shall inform the NAESB office in writing of the order in which its designated alternates shall vote in the case of abstentions; in the absence of such designation, the succession shall be upon the basis of seniority as an alternate.

**4.) NAESB Policy Concerning Communications with Media and Press (September 20, 2012) – Should this continue to be a standalone policy or included a Section 21.1 of the Bylaws?**

Any external communication with a member of the media or press made as a representative of the North American Energy Standards Board (NAESB), or citing leadership roles within NAESB, must be approved by the NAESB Managing Committee prior to release or disclosure of the communication. This policy does not prohibit communications with the media or press made in any other capacity; however, members shall make clear that they are speaking for themselves or their organizations and that any NAESB office or position they might occupy is not relevant to the subject matter of the discussion. Failure to gain the approval of the NAESB Managing Committee prior to any release or disclosure to the media or press may result in the forfeiture of leadership positions within the organization.

**5.) NAESB Self-Executing Copyright Procedure and Waiver (April 4, 2013) – Should this continue to be a standalone policy or included as Section 19.1 of the Bylaws?**

The North American Energy Standards Board (NAESB) and its predecessor organization, the Gas Industry

Standards Board, have granted limited copyright waivers to entities since their creation. As the integrity of

copyright protection is diminished if not enforced, it is essential that NAESB make every effort to enforce its copyrights, including the grant of limited copyright waivers when protected language must be made public. The limited copyright waiver serves as a tool to allow access to protected materials when such access is necessary for any number of reasons including the clear articulation of a tariff provision by an entity when reference to a standard is insufficient for comprehension of the provision. For the purpose of clarity, NAESB has memorialized the following process for the grant of limited copyright waivers.

1. As a self-executing waiver, NAESB members or non-members with valid access to NAESB standards through purchase may publish in their tariffs, compliance filings, in communications with customers or stakeholders in conducting day to day business or in communications with regulatory agencies some or all of the language contained in NAESB standards protected by copyright, provided the member or nonmember includes appropriate citations in the submission.

2. Citations must state in the publication that the language has been reproduced subject to a limited copyright waiver from NAESB with all rights reserved. The following citation should be used:

“© YEAR NAESB, all rights reserved.”

3. NAESB encourages members and non-members with valid access to NAESB standards through purchase to publish the minimum necessary copyright protected language required to meet their needs.

4. Specific to NAESB data set standards, using standalone data element names, descriptions, code values, or error messages in a software product or displayed on a webpage is not a violation of the NAESB Copyright Policy, provided the user has legitimate access to the data set standard.

5. A member or a purchaser of standards is provided through this procedure an irrevocable waiver that reflects the conditions set forth above, which shall remain irrevocable as long as the stated conditions are complied with by the member or purchaser of standards.

6. Any questions concerning the NAESB Copyright Procedure Regarding Member and Purchaser Self Executing Waiver process should be directed to the NAESB office (naesb@naesb.org; (713) 356-0060).

1. Segment block refers to the inability of a segment of the EC to achieve the 40% affirmative vote for a standard action to be approved (see Article V, § 4 of the NAESB Certificate of Incorporation and Article 2, § 2.3 of the NAESB Bylaws). [↑](#footnote-ref-1)